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Google LLC

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ANIBAL RODRIGUEZ, et al. individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

GOOGLE LLC,

Defendant.

Case No. 3:20-CV-04688-RS

**DEFENDANT GOOGLE LLC'S MOTION TO  
BIFURCATE TRIAL RE: PUNITIVE  
DAMAGES**

Date: July 30, 2025  
Time: 09:30 A.M.  
Court: Courtroom 3, 17th Floor, SF  
Judge: Hon. Richard Seeborg

Date Action Filed: July 14, 2025  
Trial Date: August 18, 2025

**TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE THAT** on July 30, 2025, at 09:30 A.M., before the Honorable Richard Seeborg of the United States District Court for the Northern District of California in Courtroom 3 , San Francisco Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, Defendant Google LLC (“Google”) will move the Court to bifurcate trial into two phases such that discussion of Google’s liability for and the amount of compensatory damages is addressed in the first phase, and any potential discussion of liability for and the amount of punitive damages is heard at the second stage of trial.

This Motion is based on this Notice of Motion, accompanying Memorandum of Points and Authorities, and all other evidence in the record.

**ISSUE PRESENTED**

Whether trial should be bifurcated pursuant to Federal Rule of Civil Procedure 42(b).

Dated: June 24, 2025

COOLEY LLP

By: /s/ Eduardo E. Santacana

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

To avoid prejudice to Google and to promote judicial economy, Google respectfully requests that this Court grant its motion to bifurcate damages into two phases such that discussion of Google’s liability for and the amount of compensatory damages is addressed in the first phase, and any potential discussion of liability for and the amount of punitive damages is heard at the second stage of trial.<sup>1</sup> Meaning, that evidence regarding Google’s potential liability for punitive damages should be presented in the second phase of trial along with any evidence related to the amount of punitive damages Google may be liable for only if the jury first finds Google liable in the first phase of trial. This bifurcation would avoid undue prejudice to Google, reduce the risk of jury confusion, and aid in accomplishing an expeditious and economic trial.

### II. ARGUMENT

“For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues . . . .” Fed. R. Civ. P. 42(b). “The determination of whether to bifurcate a trial is a matter within the Court’s discretion. Factors to be considered when determining whether to bifurcate a trial include: avoiding prejudice, separability of the issues, convenience, judicial economy, and reducing risk of confusion. Defendants, as the moving parties, bear the burden of demonstrating that bifurcation is warranted.” *Vieste, LLC v. Hill Redwood Dev.*, No. C 09-04024 JSW, 2011 WL 13153235, at \*1 (N.D. Cal. Nov. 30, 2011) (citations omitted) (granting motion to bifurcate the issue of punitive damages from liability and compensatory damages). Google can meet its burden.

**Bifurcation would reduce the risk of jury confusion.** The evidence required to prove alleged liability in this case is independent from the evidence relevant to proving damages. Liability issues will primarily relate to issues concerning Google’s disclosures, users’ expectations after reading those disclosures, as well as the technical underpinnings of how (s)WAA-off data

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<sup>1</sup> Google has filed a Motion in Limine to preclude Plaintiffs from introducing any evidence and argument regarding disgorgement before the jury, but were the Court to deny that Motion, Google would request that unjust enrichment be assessed in the second phase of trial along with punitive damages.

1 collection and processing works. Damages issues will relate primarily to whether and to what  
 2 extent the Screenwise ipsos panel payments are comparable to this case. None of this overlaps with  
 3 the evidence required to prove liability for the amount of punitive damages.

4 Because there is no substantial overlap between the evidence required to prove liability and  
 5 damages there are no efficiencies gained by trying both the liability and punitive damages phases  
 6 together. Furthermore, to introduce evidence of Google's finances when the jury should be  
 7 considering issues of liability could confuse the jury as to what evidence they should be weighing  
 8 for their liability determinations. "[B]ifurcation will not only improve efficiencies in the litigation  
 9 process, but it will also help prevent juror confusion at trial by allowing the jury to decide issues  
 10 that are as narrowly tailored as possible." *Gable v. Land Rover N. Am., Inc.*, No. SACV 07-0376  
 11 AG (RNBx), 2011 WL 3563097, at \*7 (C.D. Cal. July 25, 2011) (granting motion to bifurcate trial  
 12 into a liability phase and a damages phase); *see also Barker v. Yassine*, No. 2:11-CV-00246-AC,  
 13 2016 WL 4264149, at \*3 (E.D. Cal. Aug. 15, 2016) ("[B]ifurcation would avoid potential confusion  
 14 of the jurors and prejudice to defendant that might result from the presentation of evidence about  
 15 defendant's personal finances and net worth while the jury is determining defendant's liability and  
 16 plaintiff's non-punitive damages.").

17 **Bifurcation would avoid prejudice to Google and Plaintiffs would not be prejudiced if**  
 18 **the action is bifurcated.** Exposing the jury to Google's revenue figures when they are deliberating  
 19 over liability issues might bias the jury against Google. For example, "references to [Google's]  
 20 size, public company status, market capitalization, corporate transactions, or revenue, or to the  
 21 parties' respective financing of litigation or ability to pay any damage award . . . would constitute  
 22 an improper attempt to garner juror sympathy based on a 'David v. Goliath' argument unrelated to  
 23 the merits of the action." *Nanometrics, Inc. v. Optical Sols., Inc.*, No. 18-CV-00417-BLF, 2023  
 24 WL 7169549, at \*3 (N.D. Cal. Oct. 30, 2023) (granting motion to exclude evidence of the parties'  
 25 size disparity). Plaintiffs have indicated that they plan to introduce Google's parent company,  
 26 Alphabet, Inc.'s 2024 10-K into evidence, presumably to support their damages arguments. Google  
 27 has submitted its objections to the introduction of that evidence, which is overbroad because it is  
 28 not limited to U.S. revenue or revenue figures from the products at issue and would mislead the

1 jury as to the amount of Google’s profits, if any, that should be disgorged. However, to the extent  
 2 this Court permits the jury to see this evidence it should be done in the context of damages, not  
 3 liability, to avoid prejudice to Google. With the exception of Alphabet, Inc.’s 2024 10-K, Google  
 4 does not intend to object to Plaintiffs’ admission of relevant evidence of Google’s financial  
 5 condition, which Plaintiffs would be allowed to use in the second phase of trial. Plaintiffs have put  
 6 forth no argument as to how this delay would prejudice them. That is because there is none.

7 Furthermore, a jury instruction would not cure the potential prejudice to Google. “[W]hile  
 8 there is a ‘strong presumption that jurors follow instructions,’ a limiting instruction may not  
 9 sufficiently mitigate the prejudicial impact of evidence in all cases.” *In re Est. of Diaz v. City of*  
 10 *Anaheim*, 840 F.3d 592, 606 (9th Cir. 2016) (finding that district court abused its discretion in  
 11 failing to bifurcate liability issues from compensatory damages issues where “the jury heard  
 12 considerable and inflammatory evidence that had nothing to do” with the issues at hand); *see also*  
 13 *Honda Motor Co. v. Oberg*, 512 U.S. 415, 432 (1994) (“Jury instructions typically leave the jury  
 14 with wide discretion in choosing amounts, and the presentation of evidence of a defendant’s net  
 15 worth creates the potential that juries will use their verdicts to express biases against big  
 16 businesses.”).

17 **Bifurcation would promote judicial economy because it would permit the Court to**  
 18 **defer potentially unnecessary proceedings pending resolution of threshold issues.**  
 19 Specifically, if the jury does not find liability, the Court would not need to entertain argument and  
 20 consider evidence as to unjust enrichment or punitive damages. *See, e.g., Nash-Perry v. City of*  
 21 *Bakersfield*, No. 1:18-cv-1512 JLT BAK (SAB), 2022 WL 3357516, at \*2 (E.D. Cal. Aug. 15,  
 22 2022) (“Bifurcation would expedite and economize trial by precluding the presentation of the  
 23 financial status of the defendants unless and until it is necessary.”).

### 24 **III. CONCLUSION**

25 For the foregoing reasons, the Court should bifurcate trial such that damages are split into  
 26 two phases: The first phase would include discussion of Google’s liability for and the amount of  
 27 compensatory damages. The second phase would include any potential discussion of liability for  
 28 and the amount of punitive damages.

1 Dated: June 24, 2025

COOLEY LLP

2  
3 By: /s/ Eduardo E. Santacana

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10 Attorneys for Defendant  
11 Google LLC  
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**[PROPOSED] ORDER GRANTING  
DEFENDANT GOOGLE LLC'S MOTION TO  
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**[PROPOSED] ORDER**

Before the Court is Defendant Google LLC's ("Google") Motion to Bifurcate Trial Re: Punitive damages to bifurcate trial into two phases such that discussion of Google's liability for and the amount of compensatory damages is addressed in the first phase, and any potential discussion of liability for and the amount of punitive damages is heard at the second stage of trial.

Having considered the Notice of Motion and the incorporated Memorandum of Points and Authorities, along with other materials in the record, argument of counsel, and such other matters as the Court may consider, the Court GRANTS Google's Motion.

Accordingly, IT IS HEREBY ORDERED THAT:

Trial be bifurcated such that damages are split into two phases: The first phase would include discussion of Google's liability for and the amount of compensatory damages. The second phase would include any potential discussion of liability for and the amount of punitive damages.

**IT IS SO ORDERED.**

DATED: \_\_\_\_\_

\_\_\_\_\_  
Honorable Richard Seeborg  
United States District Judge